

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FRANK A. PICCIONI,
Plaintiff

v.

CFA, Inc.
JOHN DOES, 2-10 (fictitious names),
JOHN DOES, 11-20 (fictitious names),
JOHN DOES, 21-30 (fictitious names),
JOHN DOES, 31-40 (fictitious names),
CFA, INC., TRI MARK USA, LLC and
JOHN DOES 43-50 (fictitious names),
Jointly, severally and/or in the alternative,

Defendants

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: No. 1:20-cvv-16079-NLH-KMW
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: JURY TRIAL DEMANDED
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AMENDED NOTICE OF REMOVAL

Defendant, Chick-fil-A, Inc. (“CFA, Inc.”), by and through its counsel, Nicolson Law Group LLC hereby files this Amended Notice of Removal¹, pursuant to this Court’s November 18, 2020 Order, and removes *Frank A. Piccioni v. Chick-fil-A, Inc. et al.*, GLO-L-001228-19, from the Superior Court of New Jersey, Law Division, Gloucester County, to the United States District Court for the District of New Jersey. The grounds for removal are stated below.

I. NATURE OF THE CASE AND PROCEDURAL HISTORY

1. An action was commenced and is currently pending in the Superior Court of New Jersey, Law Division, Gloucester County, GLO-L-001228-19, in which Frank A. Piccioni is named Plaintiff and the following entities are named Defendants: CFA, Inc., TriMark USA, LLC (“TriMark”), and several John Doe fictitious defendants.

¹ Amended language is in bold, for the Court’s ease of reference.

2. On October 10, 2019, Plaintiff initiated this action by filing a Complaint. *See* Plaintiff's Complaint, attached as Exhibit A, incorporated herein by reference.

3. This case arises out of an alleged incident that occurred on October 11, 2017. Plaintiff alleges while working at the Chick-fil-A branded restaurant business located at 621 Woodbury Glassboro Road, Sewell, New Jersey (the "Restaurant Business")², a large box fell from a storage rack causing Plaintiff to sustain injuries. *See* Plaintiff's Second Amended Complaint, attached as Exhibit B at First Count ¶ 1.

4. Plaintiff asserts various theories of liability for negligence and/or strict liability pertaining to the manufacture/design, selection, installation and/or placement of the storage racks in the kitchen/stock room. *Id.* at First Count ¶¶ 2, 4(a-j); Fifth Count ¶ 4, 6(a-d).

II. DIVERSITY JURISDICTION EXISTS UNDER 28 U.S.C. §1332

5. The Court has diversity jurisdiction because the amount in controversy is alleged to exceed \$75,000.00, exclusive of interest and costs, and complete diversity exists.

6. On October 20, 2020, Plaintiff served a Statement of Damages Claimed, setting forth a demand for damages in the amount of \$1,000,000. *See* Statement of Damages Claimed, attached hereto as Exhibit C. CFA, Inc. denies liability to Plaintiff for the amount alleged, but for purposes of removal to federal court, the amount in controversy as alleged by Plaintiff is sufficient for diversity-based removal. *See* 28 U.S.C. §1446(c)(2).

7. CFA, Inc. states that diversity of citizenship exists between the parties in controversy as follows:

(a) Plaintiff, Frank A. Piccioni, is now and was at the time of the commencement of this action, a New Jersey resident, with a residence located in Sewell, New

² The Restaurant Business is owned and operated by JRP JENG, LLC as a franchisee and independent contractor of CFA, Inc. JRP JENG, LLC was Plaintiff's employer and is not a party to this action.

Jersey. *See* Ex. A. Plaintiff's exact address is 472 Centre Street, Sewell, NJ 08080. *See* Plaintiff's Responses to Form A Interrogatories, attached as Exhibit D. **Plaintiff's counsel, Randy Catalano, Esquire has confirmed that Plaintiff is a citizen of, and domiciled in, Sewell, New Jersey.** *See* November 18, 2020 email from Randy Catalano, Esquire, attached as Exhibit E.

(b) Defendant, CFA, Inc. is now and was at the time of commencement of this action a Georgia corporation with its principal place of business located at 5200 Buffington Road, Atlanta GA 30349. *See* Declaration of Virginia L. Cranford, attached as Exhibit F.

(c) TriMark is now and was at the time of commencement if this action a Delaware limited liability corporation with its principal place of business located at 9 Hampshire Street, Mansfield, MA 02048. *See* Answers of Defendant, TriMark USA, LLC to Form C Interrogatories, attached as Exhibit G.

(d) TriMark USA, LLC is owned 100% by TriMark Intermediate Holdings, LLC, a Delaware limited liability corporation. *See* Declaration of Otis Carter, Esquire, attached as Exhibit H. **TriMark Intermediate Holdings, LLC 100% owned by TriMark ERF Holdings, LLC, a Delaware LLC; TriMark Intermediate Holdings, LLC is 100% owned by TriMark USA Holdings, LLC, a Delaware LLC. TriMark USA Holdings, LLC is 100% owned by TMK Hawk Holdings, LLC, a Delaware LLC. TMK Hawk Holdings, LLC is 100% owned by TMK Hawk Parent Corp., a Delaware Corporation. As such, the ultimate parent corporation, and all intermediate LLCs, are Delaware citizens.** *See* November 20, 2020 email of Kevin McKeon, Esquire attached as Exhibit I.

8. Complete diversity of citizenship exists between the Plaintiff (New Jersey), CFA, Inc. (Georgia) and the TriMark (Delaware/Massachusetts).

III. CFA, INC. HAS MET THE PROCEDURAL REQUIREMENTS FOR REMOVAL

9. This Court has original jurisdiction over the action between the Plaintiff and the Defendants pursuant to the provisions of 28 U.S.C. §1332 and as a result, CFA, Inc. may remove this action to this Court pursuant to the provisions of 28 U.S.C. §1441.

10. This Notice is filed with the Court within the time for removal set forth in 28 U.S.C. §1446(c)(2)(A)(ii) in that no more than 30 days have passed since CFA, Inc. received confirmation of Plaintiff's statement of the amount in controversy. 28 U.S.C. §1446(b)(3).

11. The written notice of the filing of this Notice of Removal has been given to all parties in accord with 28 U.S.C. §1446(d).

12. A true and correct copy of this Notice of Removal has been filed with the Superior Court of New Jersey, Law Division, Gloucester County, as required by 28 U.S.C. §1446(d).

13. TriMark joins and has given written consent to this removal. *See* October 29, 2020 email correspondence of Kevin M. McKeon, Esquire, attached as Exhibit J.

WHEREFORE, Chick-fil-A, Inc. respectfully requests removal of this action from the Superior Court of New Jersey, Law Division, Gloucester County to the United States District Court for the District of New Jersey.

Respectfully submitted,

NICOLSON LAW GROUP LLC

BY: *Kyle G. Everly*

Kyle G. Everly, Esquire
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(610) 891-0300
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Attorneys for Defendant,
Chick-fil-A, Inc.

DATE: December 2, 2020

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FOR THE DISTRICT OF NEW JERSEY**

FRANK A. PICCIONI,
Plaintiff

V.

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JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Amended Notice of Removal was served electronically on the date stated below, upon the following:

Randy A. Catalano, Esquire
Catalano Law
401 Kings Highway South
Suite 4A
Cherry Hill, NJ 08034
Counsel for Plaintiff

Kevin M. McKeon, Esquire
Marshall Dennehey
15000 Midlantic Drive
Suite 200
Mount Laurel, NJ 08054
*Counsel for Defendant,
TriMark USA, LLC*

NICOLSON LAW GROUP LLC

BY: *Kyle G. Everly*

Kyle G. Everly
Attorney for Defendant,
Chick-fil-A, Inc.

Dated: December 2, 2020